

ASSEMBLY BILL

No. 575

Introduced by Assembly Member Torres

February 25, 2009

An act to add Section 647.8 to the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 575, as introduced, Torres. Sex offenders: restrictions.

Existing law makes it unlawful for a person who is required to register as a sex offender to reside within 2,000 feet of a public or private school, or park where children regularly gather. Existing law also provides that any person required to register as a sex offender who comes into any school building or upon any school ground without lawful business and written permission is guilty of a misdemeanor.

This bill would make it a misdemeanor for a sex offender, except in limited instances, to be physically present and delay, linger, or idle about within 300 feet of a sensitive use site, as defined. For purposes of those provisions, a sensitive use site would include specified places where children gather, including arcades, bus stops, child care centers, children's retail stores, community centers, cultural centers, cyber cafés, health clubs providing childcare services, movie theaters, museums, sports centers, and schools.

By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 647.8 is added to the Penal Code, to read:
2 647.8. (a) For purposes of this section, the following
3 definitions apply:
4 (1) “Arcade” means any of the following:
5 (A) Any establishment frequented by children that provides
6 more than five video or electronic games, including computer
7 games, that require coins, tokens, or any other form of payment
8 to play.
9 (B) Any establishment frequented by children providing
10 amusement facilities, which include, but are not limited to, pinball
11 machines, shooting galleries, or electronic or video type skill
12 games.
13 (C) Any business frequented by children at which amusement
14 rides are offered.
15 (D) Any business frequented by children providing a billiard
16 room or coin actuated machine including, but not limited to,
17 electronic game machines, machines vending any goods, wares,
18 or merchandise operated by coins.
19 (2) “Bus stop” means a location designated for the regularly
20 scheduled boarding and departing of bus passengers for bus service
21 offered to children attending school or to the general public.
22 (3) “Child” or “children” or “youth” means a person or persons
23 under 18 years of age.
24 (4) “Child care center” means any of the following:
25 (A) A “day care center” as defined in Section 1596.76 of the
26 Health and Safety Code.
27 (B) A “child care and development facility” as defined in Section
28 8208 of the Education Code.
29 (C) A facility that provides nonmedical care and supervision of
30 children, including infants, toddlers, preschoolers, and schoolage
31 children for a period of not less than 24 hours, consecutively, and
32 that is required to be licensed by the State Department of Social
33 Services.

(5) “Children’s retail store” means an establishment or place of business dedicating at least 80 percent of floor space to consumer items directed at children, such as children’s toys, clothing, shoes, eyewear, hats, jewelry and fashion accessories, books, hobby or special interest items, games, musical instruments, sporting goods, bicycles, scooters, music, recordings, dance supplies, art and art supplies, candy, and other similar items directed toward children.

(6) “Community center” or “cultural center” means a multipurpose meeting or recreational facility, typically consisting of one or more meeting or multipurpose rooms, kitchen, or outdoor barbecue facilities that are available for use by various groups for activities such as meetings, parties, receptions, and dances.

(7) “Cyber café” means an establishment frequented by children that provides more than four computers or other electronic devices for access to the Internet, e-mail, video games, or computer software programs, which are networked via LAN or WAN, and that functions as a client/server program and that seeks compensation in any form from users. Cyber café is synonymous with PC café, Internet café, or cyber center.

(8) “Health club providing childcare services” means facilities that provide for sport, exercise, and health-related activities, group classes, and personal instruction and training, and childcare for children of patrons while using the facilities. Additional facilities may include a pool, spa, sauna, tennis courts, racquetball or handball courts, and weight and exercise equipment. Additional uses may include retail sales of exercise clothing, accessories, food and beverages, and membership sales. This definition does not include facilities that provide yoga, Pilates, or similar type of studio activities.

(9) “Movie theater” means an establishment designed for the showing of motion pictures. Additional uses may include the sale of concession food items and nonalcoholic beverages.

(10) “Museum” means public or quasi-public facilities, such as aquariums, arboretums, art exhibitions, botanical gardens, historical sites, and exhibits that can be viewed by the public. Accessory uses include such uses as restaurants, cafeterias, and gift shops.

(11) “Nontraditional school” means any of the following:

(A) A public or private preschool.

(B) A Montessori school.

1 (C) A home school that has filed an affidavit or statement with
2 the Superintendent of Public Instruction for the current year
3 pursuant to Section 33190 of the Education Code and that provides
4 regularly scheduled home schooling to children as an alternative
5 to their attendance at other public or private schools.

6 (D) A school approved by the state as a charter school.

7 (12) “Rail station” means a location designated for the regularly
8 scheduled boarding and departing of rail passengers for rail-based
9 transportation service offered to children attending school or to
10 the general public.

11 (13) “Sensitive use site” means any location defined in
12 paragraphs (1) to (12), inclusive, and (16) to (20), inclusive, of
13 this subdivision.

14 (14) “Sensitive use site parcel boundary” means the legal
15 boundary of the parcel or parcels occupied by the sensitive use
16 site, regardless of whether the site occupies the entire parcel or
17 any portion thereof.

18 (15) “Sex offender” means any person for whom registration is
19 required pursuant to the Sex Offender Registration Act, regardless
20 of whether that person is on parole or probation.

21 (16) “Sports center” means any of the following:

22 (A) A location designed for accommodating sports or
23 recreational activities that is frequented by children, seasonally or
24 otherwise, including, but not limited to, playgrounds, skate parks,
25 baseball fields, basketball courts, tennis courts, soccer fields,
26 swimming facilities, karate studios, dance or ballet studios, and
27 other sports or recreational facilities frequented by children
28 regardless of whether that location is publicly or privately owned.
29 Facilities open to members of a common interest development or
30 homeowners association in which that facility exists shall be
31 considered a sensitive use site. All other facilities open to the
32 general public not otherwise addressed in this definition that are
33 located in residential zones not open to the general public shall
34 not be included in this definition of sports center.

35 (B) A facility frequented by children that provides a wide range
36 of recreational activities including, but not limited to, roller or ice
37 rinks, skateboard, miniature golf, golf course, golf driving range,
38 batting cages, go carts, and rock climbing. Additional uses at the
39 facility, including food concessions and retail sales of items related
40 to the activity, such as clothing and accessories and sundries, are

1 intended to be part of the definition and scope of sports center.
2 Facilities open to members of a common interest development or
3 homeowners association in which such a facility exists shall be
4 considered a sensitive use site. Facilities located within residential
5 zones and not open to the general public shall not be included in
6 the definition of sports center.

7 (17) "Studio" means small-scale facilities that typically provide
8 for the teaching or tutoring of children including, but not limited
9 to, the arts, music, drama, production, rehearsal, dance instruction,
10 photography instruction, and the processing of photographs
11 produced by users of the studio facilities, martial arts training, or
12 gymnastics instruction. This definition does not include larger
13 facilities such as a learning center.

14 (18) "Traditional school" means any of the following:

15 (A) A private school that provides education from kindergarten
16 through grade 12 and that is not affiliated with a local school
17 district.

18 (B) A public school providing instruction from kindergarten
19 through grade 12.

20 (C) A community college, technical school, public or private
21 college, university, or professional school granting associate arts
22 degrees, certificates, and undergraduate and graduate degrees.

23 (19) "Tutoring center" or "learning center" means either of the
24 following:

25 (A) A location at which a public or private organization offers
26 regularly scheduled tutoring and or educational instruction to
27 children for purposes of supplementing the regular school
28 instruction of children.

29 (B) An establishment that provides for the teaching or tutoring
30 of schoolaged children in general or specific academic subjects
31 on an individual basis or in groups, and that is not affiliated with
32 a public or private school. These services are intended to
33 supplement normal school teachings and are not intended to replace
34 or substitute for public or private school.

35 (20) "Youth center" means a location at which a public or
36 private organization provides mentorship, educational, or
37 recreational programs to children on a regularly scheduled basis
38 for purposes of social, educational, artistic, athletic, or community
39 enrichment. Examples of youth centers include, but are not limited
40 to, Boys and Girls Club facilities and YMCA facilities.

(b) Except as provided in subdivision (f), it is unlawful for any sex offender to be physically present and delay, linger, or idle about within 300 feet of any sensitive use site, as defined in subdivision (a).

(c) In determining whether a particular point is within 300 feet of any sensitive use site, distances shall be measured in a direct straight line from any point of the boundary of the legal parcel on which the sensitive use site is located.

(d) A violation of this section is a misdemeanor, punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both imprisonment and a fine. A person is guilty of a separate offense for each day during which a violation occurs.

(e) This section applies to every person who has been convicted of an offense requiring registration pursuant to the Sex Offender Registration Act, regardless of the person's probationary status, parole status, or dates of conviction or release from jail, prison, or confinement.

(f) The provisions of this section shall not apply in any of the following instances:

(1) The sex offender is a minor and he or she is present within 300 feet of a sensitive use site while accompanied by a parent or legal guardian.

(2) The sex offender is present within 300-feet of a sensitive use site only because he or she is traveling, whether on foot, by car, or by other means to or from a destination beyond the 300-foot area, and his or her presence within the 300-foot area is temporary and incidental to that travel.

(3) The sex offender is present within 300 feet of a sensitive use site only because he or she is accompanying a related minor to that site and only for so long as is necessary to provide care or supervision to the related minor. As used in this paragraph, "related minor" means a minor to whom the sex offender is the legal parent or guardian.

(4) The sex offender reasonably does not know that he or she is present within 300 feet of a sensitive use site, provided that he or she immediately takes steps to move beyond that 300 foot area upon learning or being notified of the existence of the sensitive use site.

1 (5) The sex offender is exercising First Amendment rights
2 protected by the United States Constitution, such as the free
3 exercise of religion at a place of worship or freedom of speech or
4 the right of assembly at a traditional public forum.

5 (6) The sex offender is present within 300 feet of a sensitive
6 use site only because he or she is traveling, whether on foot, by
7 car, or by other means, to or from his or her place of employment
8 for employment purposes.

9 (7) The sex offender is present within 300 feet of a sensitive
10 use site only because he or she is traveling, whether on foot, by
11 car, or by other means, to or from a medical facility, such as a
12 hospital or doctor's office for a legitimate and verifiable medical
13 appointment.

14 SEC. 2. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.